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11
12 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
13 **AT SPOKANE**

14 STATE OF WASHINGTON, *et al.*,

15 Plaintiffs,

16 v.

17 UNITED STATES DEPARTMENT OF
18 HOMELAND SECURITY, *et al.*,

19 Defendants

No. 4:19-cv-5210-RMP

REPORT PURSUANT TO MAY 13,
2020 ORDER

1 Defendants respectfully submit this report pursuant to the Court's May 13, 2020
2 Order Denying in Part and Granting in Part Defendants' Motion to Stay Discovery Order
3 re: Privilege Log ("Order"). ECF No. 219. The Court ordered Defendants to produce a
4 privilege log pertaining to Defendants' administrative record on a rolling basis starting
5 on June 12, 2020. *Id.* at 6. The Court further ordered Defendants to make reports to the
6 Court and Plaintiffs every other Friday, on their progress toward completion of the
7 privilege log. *Id.*

8 **Notifying Custodians of Obligation to Preserve Documents**

9 First, the Court ordered Defendants to report on their progress in "notifying
10 potential custodians of their obligation to preserve potentially relevant documents, even
11 if assertedly privileged[.]" Order at 6. As discussed in Defendants' June 12, 2020 report,
12 Defendants have notified all potential custodians of their obligation to preserve
13 potentially relevant documents, even if assertedly privileged.

14 **Segregating Privileged Documents for Review**

15 Second, the Court ordered Defendants to report on their progress in "segregating
16 all assertedly privileged documents for review." Order at 6.

17 Defendants reported in their June 12, 2020 report that they had collected email
18 records from 49 custodians. Since then, Defendants have collected email records from
19 five additional custodians and collected additional email records from two of the 49
20 custodians. Accordingly, email records for all custodians have now been collected. The
21 emails for those custodians have been batched for review by the Department of Justice,
22 except for approximately five custodians whose documents will soon be added to the

1 review batches.

2 Although email records are expected to constitute the vast majority of documents
3 subject to the Court's Order, Defendants are also working to collect non-email electronic
4 documents and paper documents, if any, that do not also exist in electronic form. At this
5 time, due to the COVID-19 crisis and the telework status of most agency personnel,
6 Defendants cannot determine whether there are any paper documents that will need to be
7 collected, as those documents are physically located in agency offices and are therefore
8 currently inaccessible.

9 **Logging Privileged Documents**

10 Third, the Court ordered Defendants to report on their progress in logging
11 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of June 26,
12 2020, 41,882 documents have been batched for review in the DOJ document review
13 platform. 2,595 of those documents have been reviewed and 40 are listed on the privilege
14 log.¹ In addition, several documents have been identified that contain third party equities
15 and which Defendants expect to include in future installments of the privilege log after
16 consulting with the appropriate third parties.

17
18 Dated: June 26, 2020

Respectfully submitted,

19 JOSEPH H. HUNT
20 Assistant Attorney General

21 ¹ In percentage terms, roughly 6.2% of the batched documents have been reviewed. As
22 noted above, additional documents will be added to the review platform.

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5 /s/ Joshua M. Kolsky

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all users receiving ECF notices for this case.

/s/ Joshua Kolsky

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